

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CLARENCE DELANEY, JR.,

Plaintiff,

-v-

1:18-CV-1193
(DNH/CFH)

CITY OF ALBANY; POLICE OFFICER BRACE,
Detective for the City of Albany/CIU; POLICE
OFFICER DIGIUSEPPE, Detective for the City
of Albany/CIU; POLICE OFFICER JOHN DOE
1, Police Officer for City of Albany; and POLICE
OFFICER JOHN DOE 2,3,4, Police Officers for
the City of Albany,

Defendants.

APPEARANCES:

CLARENCE DELANEY, JR.
Plaintiff pro se
17-A-0236
Fishkill Correctional Facility
P.O. Box 1245
Beacon, NY 12508

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Clarence Delaney Jr. brought this civil rights action pursuant to 42 U.S.C. § 1983. On June 20, 2019, Magistrate Judge Hummel advised by Report-Recommendation that some of plaintiff's claims be dismissed with prejudice and some without prejudice, and that the remaining claims be permitted to proceed. Magistrate Judge

Hummel recommended providing plaintiff an opportunity to file a third amended complaint to attempt to cure the deficiencies noted in some of his claims. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. To the extent plaintiff attempts to set forth a conspiracy claim, that claim is DISMISSED WITHOUT PREJUDICE and with opportunity to amend to demonstrate an agreement between defendants, and how defendants acted in concert to allegedly falsely arrest him;

2. Insofar as plaintiff's second amended complaint may be read as attempting to set forth Fourth, Fifth, and Fourteenth Amendment claims for improper seizure of his property or a First Amendment claim for retaliatory arrest, such claims are DISMISSED WITH PREJUDICE;

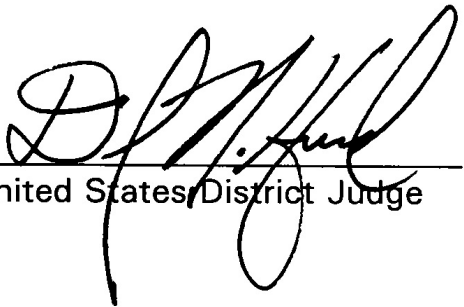
3. Plaintiff is provided thirty (30) days from the date of this Decision and Order to file a third amended complaint limited to claims not otherwise dismissed with prejudice;

4. If plaintiff fails to file a third amended complaint within thirty (30) days from the date of this Decision and Order, the Clerk shall return the case to Magistrate Judge Hummel for service of the second amended complaint with the unamended claims deemed stricken; and

5. If plaintiff files a third amended complaint within thirty (30) days from the date of

this Decision and Order, the Clerk shall return the case to Magistrate Judge Hummel for review of the third amended complaint.

IT IS SO ORDERED.



United States District Judge

Dated: July 31, 2019
Utica, New York.